THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NOS. 9545, 16907, 21970 AND 22028 OF 2006

COMMON ORDER: (Per TCSR,J)

Inasmuch as these writ petitions emanate from a common Judgment and as common questions of law and fact are involved, they can be disposed of together.

The unsuccessful respondents 65 and 66 in one set filed Writ Petition No.21970 of 2006 and respondents 72 and 73 in another set filed Writ Petition No.9545 of 2006 seeking a writ of certiorari to quash the common Judgment dated 28.12.2005 passed by the learned Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad, (for short the Act) in L.G.C. No.170 of 1997. Writ Petition Nos.22028 and 16907 of 2006 are the writ petitions filed seeking to quash the order dated 26.02.2006 passed by the learned Special Court in Review Petitions No.190 of 2006 and 72 of 2006 respectively in L.G.C. No.170 of 1997.

The State of Andhra Pradesh filed the application in L.G.C. No.170 of 1997 against as many as 87 respondents including these writ petitioners under Section 8(1) of the Act to declare all the respondents as land grabbers in respect of the application schedule property and for delivery of vacant possession of the same to the applicant and for awarding compensation of Rs.4,97,00,640/- and for profits from the land estimated at Rs.5,96,40,768/- with interest at 12 per cent per annum. Eventually at the culmination of enquiry, the learned Special Court allowed the application in part; while declaring the title of the State it rejected the claim for compensation and profits. The Court further directed the Government to consider the request of

the respondents for regularization in terms of the observations made by the High Court in Writ Appeal No.509 of 1977 while simultaneously directing the respondents to approach the Government within a period of three months from the date of the impugned Judgment; After pronouncement of the impugned Judgment in L.G.C. No.170 of 1997 on 28.12.2005, the writ petitioners filed review petitions, as aforesaid, which were eventually ended in dismissal.

The case of the applicant State in brief is as follows:- The application schedule property is covered by survey No.27 correlated T.S.No.16, Block-K, Ward No.36, situate at Mallepally village. Mallepally village in Asifnagar Mandal in Hyderabad was an Ex-Jagir village of Surfekhas. Its total extent is 990 acres. Out of the said extent, an extent of 660 acres of land was under the use and possession of Ex-Nizam Army and for the balance a Muntakhab bearing Tameel No.1873 of 1348 Fasli dated 18th Farwardi was issued in the name of Sri Ahmed Mirza Khan Jagirdar of Mallepally who shared the property with five others. As per the Muntakhab the total area of Jagir grant was 141 Bigas 171 Boms i.e. Ac.106.15 guntas after excluding 164 Bigas 18 Boms of land which were already acquired by the then City Improvement Board, now known as “Andhra Pradesh Housing Board”. After the advent of Hyderabad Jagir (Abolition) Regulation of 1353 Fasli by means of a notification No.49 dated 24.09.1949, Mallepally Jagir was abolished and Jagir Administration was transferred to the Government. Since the legal heirs of the Jagir were by then minors, the administration was under the supervision of Court of Wards. The Jagir administration after passing the commutation award sent it to the Court of Wards for payment to the respective sharers. The legal representatives of Jagirdar filed Civil Suit No.71 of 1969 claiming possession for over an extent of Ac.503.36 guntas and in the alternative for payment of compensation at the rate of Rs.35/- per square yard. Eventually the said suit ended in dismissal by Judgment dated 31.08.1976 and the appeal filed qua the said Judgment in

C.C.C.A. No.99 of 1977 before the High Court too ended in dismissal on 18.09.1984. The land in an extent of 660 acres was under the possession and use of Ex-Nizam Army which was otherwise known as "Hyderabad Cantonment". Consequent upon the demobilization of Hyderabad Army the State Government issued orders in reference No.1181, G.A.D., dated 21.03.1951 for abolition of the Cantonment and directed the Collector to take possession of all the Cantonment lands and P.W.D. was directed to take over possession of all Army Buildings. Accordingly, the possession was also taken in the year 1951 itself. The land covered by survey No.27 of Mallepally had been declared as Government land by the High Court in Writ Appeal No.509 of 1977 and the S.L.P. No.16948 of 1985 filed qua the said Judgment ended in dismissal by an order dated 18.11.1988. Thus in view of the above orders, survey No.27 of Mallepally village has been finally declared as Government land.

The respondents illegally grabbed the said land and raised unauthorized structures in the application schedule land and also obtained municipal door numbers and permissions. The permissions will not confer any right, title whatsoever in favour of the respondents over the application schedule property. Hence, the application.

The application filed by the State was resisted by the respondents by filing counters in various sets. In the batch of instant writ petitions, we are concerned only with the counters filed by the respondents 65 and 66 in one set and the respondents 72 and 73 in the other set.

The case of the respondents 65 and 66 in brief is as follows: One Pothraj Mukundam Swamy was the owner and possessor of the land ad measuring 4840 square yards in survey No.12 of Masab Tank, Mallepally. The said Mukundam Swamy sold the property in favour of one Sri W.S.Narasimhulu s/o Shankaraiah under a sale deed No.231 dated 1st day of Thir, 1357 Fasli. Subsequently, survey No.12 was changed to survey No.27. The said W.S.Narasimhulu and three others

who were in possession and enjoyment of the land in turn sold the property in favour of Smt.Begum Safia Sultana under a registered sale deed No.626 dated 15.07.1958 after having obtained the necessary permission to alienate the land from the Deputy Collector by means of an order dated 08.08.1959 under Sections 47 and 48 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The extent of the said land is 1 acre and Smt. Safia Sultana was put in possession of the same on 15.07.1958. Supplementary sethwar was issued for the said land in her favour and it was denoted as survey No.27/1 under file No.G1/322/457/60. Asal Sethwar and mutation proceedings were also issued in her favour. Later Smt.Safia Sultana constructed residential premises and compound wall on the land with municipal door No.10-5-2. The daughters of Smt.Safia Sultana sold 700 square yards of the land in the premises bearing No.10-5-2 to one Kaneez Zahra Shahnaz Sultana Jaffery under a registered sale deed No.8474/80 dated 07.08.1980. The said purchaser in turn sold the land admeasuring 84 square yards and 87 square yards to the respondents 65 and 66 respectively under separate registered sale deeds dated 25.11.1988. She again sold an extent of 329 square yards under a registered sale deed dated 29.11.1988 and as such the respondents 65 and 66 became the owners to an extent of 500 square yards of the land. When the Revenue Officers tried to demolish the said premises and sought to evict the respondents 65 and 66, they filed a Writ Petition No.26465 of 1997 and the same was disposed of with certain directions on 17.02.1998. Even otherwise, the respondents 65 and 66 have been in continuous and peaceful possession and enjoyment of the land since the time of their predecessors-in-title and prescribed title to the same by means of adverse possession.

The case of the respondents 72 and 73 in brief is as follows: - The respondents 72 and 73 purchased the land in dispute from one Smt.Sabiha Kamal, one of the daughters of Smt.Safia Sultana. Smt.Sabiha Kamal, the vendor of the respondents 72 and 73

succeeded to 1200 square yards of land from her mother and she filed declaration before the Urban Land Ceiling Authority showing the entire property as belonging to her. The State issued G.O.Ms.No.940 dated 06.06.1981 permitting her to retain the excess vacant land of 336.67 square meters. The said Sabiha Kamal sold an extent of 855 square yards of site to the respondents 72 and 73 under a registered sale deed dated 30.04.1992. Respondents 72 and 73 developed the land and raised constructions and have been in continuous and peaceful possession and enjoyment of the same bearing municipal door No.10-5-2/1/8/2/A. The said property is part and parcel of survey No.27/1 new (old survey No.12) of Mallepally village. Even otherwise, the respondents perfected their title over the property by means of adverse possession.

On the above pleadings, the learned Special Court framed as many as eight issues as under:

1) Whether the applicant has title to the application schedule property?
2) Whether the rival title set up by the respondents is true, valid and binding?
3) Whether the respondents are land grabbers within the meaning of the Act XII of 1982?
4) Whether the respondents, in any event, prescribed title by adverse possession?
5) Whether the applicant-State in case of its success is entitled to any compensation as prayed for?
6) Whether the Judgment in O.S.No.162/63 as confirmed by the first appellate Court viz., Chief Judge, City Civil Court, Hyderabad, in A.S.No.10/65 which became final by the dismissal of the second appeal of the High Court of A.P. in S.A.No.218 of67 dated 13.12.68 operates as *res judicata* in these proceedings?
7) Whether the respondent No.61 prescribed title by adverse possession?
8) To what relief?

At the time of enquiry, 2 witnesses were examined on the side of the applicant and got Exs.A.1 to A.16 marked. As many as 46

witnesses were examined on the side of the respondents, who are all the respondents themselves, and got Exs.B.1 to B.316 marked.

Appreciating the evidence thus adduced on either side, the learned Special Court, as aforesaid, upheld the title of the State and directed the respondents to approach the Government for regularization. The review petitions filed by these writ petitioners subsequently ended in dismissal.

Sri Vilas V.Afzulpurkar, learned senior counsel, contends that the Special Court failed to consider all the documents filed on the side of the writ petitioners and thereby committed an error of jurisdiction. It is his further contention that there has been no allegation whatsoever against the present writ petitioners, who have been impleaded during the pendency of the land grabbing case as respondents 72 and 73 and, therefore, they cannot be considered as land grabbers.

Learned Government Pleader for Revenue sought to sustain the conclusions reached by the learned Special Court.

The application schedule land is covered by Sy.No.27 of Asif Nagar, which is correlated to T.S.No.16, Block 'K', Ward No.36 of Mallepally. It has been described specifically with reference to the four boundaries in the schedule. Admittedly, Mallepally village is an ex-jagir village of sarfekas. As per the claim of the State the total extent of the Jagir was Acs.990.00, out of which an extent of Acs.660.00 of land was under use and possession of Ex.Nizam's Army and for the remaining extent a Muntakhab bearing Tameel No.1873 of 1348 Fasli dated 18th Farwadi was issued in the name of Sri Ahmed Ali Mirza Khan, the jagirdar of Mallepally. Mallepally Jagir was abolished under Hyderabad Jagir (Abolition) Regulation of 1353 Fasli. Consequently, the Jagir administration was vested in the State. Presumably, therefore, the case of the State seems to be that every inch of the land in the Mallepally Jagir vested in the State consequent upon the abolition of the Jagir and whoever claims any interest in any part of the land in the said Jagir must trace his title only through the Jagir

Administration.

The case of the respondents 65, 66, 72 and 73 was that one, Pothraj Mukundam Swamy was the owner and possessor of the land admeasuring 4840 square yards in Sy.No.12 of Masab Tank, Mallepally Jagir and the said Mukundam Swamy sold the property in favour of W.S.Narsimhulu under sale deed No.231, dated first day of Thir 1357 Fasli and that the said survey number was subsequently changed to Sy.No.27. The said Narsimhulu and three others were under possession and enjoyment of the said land as absolute owners and they in turn sold the property in favour of Smt. Begum Safia Sultana under a registered sale deed document No.626 dated 15-07-1958 through whom the respondents 65, 66, 72 and 73 are now claiming.

In the instant writ petition the case of other respondents is not germane. In support of the respective contentions, while the State seeks to rely upon Exs.A.1 to A.16, the writ petitioners, on the other hand, place reliance upon Exs.B.180 to B.196. Undeniably the legal heirs of Yosuf Ali Mirza, the grand son of Ahmed Ali Mirza, the jagirdar, filed a suit O.S.No.71 of 1969 against the State, Municipal Corporation of Hyderabad and two others. That suit ended in dismissal. They carried the matter to the High Court in appeal in C.C.C.A.No.99 of 1977, which too ended in dismissal. Ex.A.6 is the certified copy of the judgment of the High Court in C.C.C.A.No.99 of 1977. The history of the Jagir appears to have been traced therein *inter alia.* The learned Special Court placed much reliance upon this document so as to ultimately reach the conclusion that the applicant is the owner of the application schedule land. Again survey No.27 of Mallepally was declared as Government land by the High Court of Andhra Pradesh in Writ Appeal No.509 of 1977 the certified copy of the Judgment whereof is Ex.A.7. The Judgment in Writ Appeal No.509 of 1977 attained finality inasmuch as the S.L.P. filed qua the said Judgment ended in dismissal by the Apex Court. In addition to the said documents,

reliance has been placed upon Exs.A.10 and A.11, the attested xerox copies of the sethwar. These two documents and Ex.A.1 TSLR, said to have been prepared basing on Exs.A.10 and A.11 sethwars, are the trump cards for the State to buttress the claim of title over the land in dispute. These documents have also been relied upon in the judgment in O.S.No.71 of 1969 and C.C.C.A.No.99 of 1977. Eventually, the learned Special Court reached the conclusion that the clear and emphatic findings of the High Court reached in C.C.C.A.No.99 of 1977 and W.A.No.509 of 1977 and also in a connected cases O.S.No.71 of 1969 and C.C.C.A.No.293 of 1979 did not leave any room for doubt that the application schedule land was the property of the State.

Having thus reached the conclusion that the applicant-State was the owner of the application schedule land, the Special Court then proceeded to consider the individual cases of the respondents. Insofar as the present writ petitioners are concerned, who are respondents 65, 66, 72 and 73, the Special Court *inter alia* in its Judgment considered their case in para 35.5. Eventually in para 36.5 the learned Special Court was of the view that the respondents barring the heirs and successors of Chunnilal and his family members, Lachiram and his sons and Balram and his sons, all others have not exercised due diligence in purchasing the lands from their vendors. Any number of other documents like registered sale deeds, property tax receipts, MCH permissions including the certified copies of some court orders filed by certain respondents will not confer any title on them. It appears, these respondents sought to contend that the application schedule land is different than the land covered by Sy.No.27/1, which they claimed to have purchased. However, the Special Court was of the view that the respondents failed to show the title of Mukundam Swamy. Having been of that view and secondly as the respondents in the perception of the Special Court failed to prove adverse possession, eventually while upholding the title of the State, held these

respondents as grabbers of the application schedule land.

Having regard to the history of the land traced by the learned Special Court with reference to Exs.A.6 and A.7 judgments and as application schedule land is part and parcel of the erstwhile Mallepally Jagir and as Ex.A.1 to A.16 in the perception of the learned Special Court clearly establish the title of the State, it reached the conclusion as aforesaid. The finding of the learned Special Court seems to be impeccable as it clearly founded on unimpeachable documentary evidence in Exs. A.1 to A.16. Nevertheless such a finding shall have to be reached while simultaneously considering the case of the respondents. The respondents/writ petitioners filed Exs.B.180 to B.196. Exs.B.180 and B.182 are the registration extracts of sale deeds under which Mukundam Swamy and W.S.Narsimhulu sold the property. Exs.B181 and B183 are the translation copies thereof. However, Exs.B184, B185 and B186 appear to be some of the important documents. These documents show the recommendation of the revenue authorities for mutation in favour of Begum Safia Sultana in the revenue records as pattedar of the land covered thereunder. The probative value of these documents has not been considered. It is no doubt true that application schedule land being a part of the land situate in Mallepally Jagir, the title of Mukunda Swamy should be traced. However, the subsequent entries said to have been made in the revenue records, particularly Exs.B.184, B.185 and B.186 shall not be ignored and shall have to be considered and eventually the conclusion shall be reached. Of course, the applicant in a case of this sort is expected to show *prima facie* the title and the burden then shifts to the respondents to prove that they are not the land grabbers as per the mandate contained under Section 10 of the A.P. Land Grabbing (Prohibition) Act. The Special Court, which has jurisdiction to take cognizance and adjudicate the contentious issue between the parties, so as to decide as to whether the respondents committed any act of land grabbing, has jurisdiction to go into the right, title to or interest of

the land in dispute. The Special Court excludes the jurisdiction of the civil Court. Therefore, the adjudication of title, right or interest in the property shall be made by the Special Court like the civil Court. Therefore, the Special Court shall consider the documents filed on either side and by the test of preponderance of probability shall reach the eventual conclusion. On a perusal of the entire impugned Judgment it is obvious that the Special Court not only failed to consider Exs.B.184 to B.186 and B.196 vis-à-vis the documents of the applicant nay there has been no reference of the same in its judgment. Failure to consider these documents obviously constitutes an error of jurisdiction which squarely attracts the Certiorari jurisdiction of this Court under Article 226 of the Constitution of India. The impugned Judgment without referring to the merits of the case is liable to be set aside on that ground alone. In view of the total failure of the Special Court in considering the important documents filed on the side of the writ petitioners, we are of the considered view that it is fairly a case where the matter shall have to be remitted to the Special Court for fresh consideration without touching upon the merits of the case.

In the result, the Writ Petitions are allowed and the impugned Judgment insofar as the writ petitioners are concerned is hereby set aside and the matter is remitted to the Special Court for fresh consideration in the light of the observation made *inter alia* in this judgment. The costs shall abide the result of the case.

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(T.CH.SURYA RAO,J)

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(G.CHANDRAIAH,J)

Dated 30-04-2007

VGSR/SKMR

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NOS. 9545, 16907, 21970 AND 22028 OF 2006

DATED 30—04—2007

Rukiya Begum W/o Late Burhan Khan,
Aged about 80 years, R/o H.No.22-3-638/1/4,
Purani Haveli, Hyderabad.
And Others ... Petitioners

v.

The State of A.P. represented by
The Mandal Revenue Officer,
Asif Nagar Mandal, Hyderabad
And another ... Respondents